

1 MR. COLE: It was brought to my attention
2 yesterday that a principal of Adams Communications,
3 Mr. Milton Podolsky, has been represented in some
4 capacity historically and apparently currently by the
5 law firm of Holland & Knight. I had not been aware
6 of that previously. Mr. Podolsky is going to be
7 deposed this morning. He's sitting in the room with
8 us right now. I've discussed this with Adams
9 representatives last evening and this morning, and
10 this morning we have asked Mr. Hutton to disqualify
11 himself and the law firm of Holland & Knight because
12 of conflict of interest because they represent at
13 least a party on both sides of the case.

14 Mr. Hutton, who can obviously speak for
15 himself and I'm sure will, has advised us that they
16 are not going to disqualify themselves, that they
17 have reviewed it in house and have determined that
18 there is no conflict; however, as far as I can
19 tell -- and Mr. Hutton can address this -- there
20 appears to have been no waiver sought or provided to
21 Holland & Knight by Mr. Podolsky.

22 On that basis, we're going to move to

1 disqualify Holland & Knight, and I wanted to alert
2 you to that. Mr. Hutton, obviously I'll turn the
3 phone over to him and he can state his position.

4 THE COURT: What is the scope of your
5 motion? Are you asking that Holland & Knight be
6 barred from the case for all purposes or just for
7 this witness?

8 MR. COLE: All purposes.

9 THE COURT: Let me hear from Mr. Hutton.

10 MR. HUTTON: Judge Sippel, it's my
11 understanding that my law firm represents not
12 Mr. Podolsky personally, but companies in which
13 Mr. Podolsky holds an interest on matters totally
14 unrelated to Adams Communications or Reading
15 Broadcasting, Inc., and when I learned of the
16 representation of those interests, I asked for advice
17 and an opinion from our ethics committee, and the
18 conclusion was that we did not have a conflict of
19 interest and that we could continue the
20 representation of Reading Broadcasting, Inc.

21 If Mr. Cole wants to move to disqualify us,
22 I believe he ought to file something in writing and

1 we can brief the issue.

2 THE COURT: Well, you have not started --
3 you haven't started with the witness yet; is that
4 correct?

5 MR. COLE: Yes, sir.

6 MR. HUTTON: That's correct.

7 THE COURT: And it is a given that the
8 Holland & Knight law firm does represent companies in
9 which Mr. Podolsky is a principal?

10 MR. COLE: That's correct.

11 THE COURT: Meaning that he is an officer,
12 director and/or shareholder?

13 MR. COLE: Partner, I believe.

14 THE COURT: Beg your pardon?

15 MR. COLE: Partner, I believe.

16 THE COURT: Partner.

17 MR. COLE: Yes.

18 THE COURT: What's the nature of the
19 business? Is it more than one firm that this
20 conflict comes up or is it just one company? I get
21 the impression that it's more than one.

22 MR. COLE: Hold on. Mr. Podolsky, is it

1 more than one entity?

2 MR. PODOLSKY: Your Honor, it's a family
3 partnership which owns a lot of real estate, and
4 these real estates are in separate partnerships with
5 other people. We own just interests in these pieces
6 of real estate, so --

7 THE COURT: I'm sorry, I was going to say
8 in a general sense, it's a family business
9 opportunity in the form of a partnership?

10 MR. PODOLSKY: Yes, it's a family
11 partnership of which I have a minority interest, and
12 that family partnership has mostly minority interests
13 in real estate, multiple pieces of real estate, which
14 need leases and which need financing and --

15 THE COURT: I hear you. What specifically
16 does -- where do you feel that the conflict is going
17 to come up in the sense that Holland & Knight can't
18 represent -- where do they -- that they can't
19 represent who? It's unfair to Mr. Podolsky that
20 Holland & Knight knows things about him that they
21 otherwise wouldn't know, is that what --

22 MR. COLE: That's right, Your Honor. For

1 example -- and let me ask Mr. Podolsky to excuse
2 himself from the room because I don't want to violate
3 the sequestration agreement that we have here.
4 Mr. Podolsky, could you step outside momentarily.

5 Mr. Gilbert from Adams is still in the
6 room, but he has been deposed and therefore this will
7 not, I believe, violate any sequestration orders.
8 Mr. Podolsky has just left.

9 During the three depositions yesterday,
10 each of the three, Mr. Hutton specifically inquired
11 about financial statements of each of the Adams
12 principals, and I fully anticipate he would, if given
13 the opportunity, ask Mr. Podolsky for his financial
14 statement.

15 We would anticipate that in connection with
16 the representation of Mr. Podolsky's interests, those
17 financial statements or something akin to those
18 financial statements may already be available to
19 Holland & Knight in their own files. That alone, it
20 seems to me, constitutes or presents a conflict which
21 is unresolvable other than by disqualification.

22 THE COURT: And you say, Mr. Hutton, that

1 all of this has been looked into by an appropriate
2 committee of your firm and they feel that there's no
3 conflict here?

4 MR. HUTTON: That's correct. They believe
5 that the matters are entirely unrelated. Mr. Cole, I
6 think, is misstating what was asked at the deposition
7 yesterday.

8 Yesterday I asked if each principal of
9 Adams had provided a personal balance sheet of their
10 personal net worth to Mr. Gilbert in connection with
11 the financial certification provided by Adams.

12 I did not ask the witnesses to submit their
13 balance sheet to me.

14 MR. COLE: Your Honor, if I may just
15 interject, Mr. Hutton expressed surprise that he
16 hadn't seen financial sheets, asked me why I hadn't
17 produced them and asserted to me that they were
18 discoverable under his request for communications
19 among Adams principals, a proposition with which I
20 disagreed, but there was, in fact, the colloquy
21 yesterday, and so I think it's not accurate to say he
22 did not ask for copies of the balance sheets.

1 MR. HUTTON: Your Honor, let me respond to
2 that. That was an off the record discussion. I
3 don't have a copy of my motion for production of
4 documents in front of me, I did not have yesterday,
5 and so I did not pursue it.

6 If I want those balance sheets, I'll file a
7 motion to compel. But as of now, there's no pending
8 motion for those documents.

9 MR. COLE: Your Honor, if I may just --
10 moving along off of that point, while I have no doubt
11 that Holland & Knight's internal ethics committee may
12 have looked at this, the fact remains from everything
13 I've heard that no information concerning a possible
14 conflict was presented to Mr. Podolsky for his
15 consideration, and it's my understanding that in
16 matters of potential conflicts, the client's
17 knowledge and consent is an important element. So
18 while it is nice that the law firm decided for its
19 purpose that there is no conflict, I think the fact
20 that Mr. Podolsky was not brought into the loop at
21 all is troublesome here.

22 MR. HUTTON: Your Honor, I'd like to

1 respond to that, there are certain conflicts that can
2 be waived by the client with knowledge and consent;
3 however, in order for that to happen, there has to be
4 a conclusion that there is a conflict in the first
5 place, and it was Holland & Knight's conclusion that
6 there is no conflict and, therefore, no waiver was
7 needed.

8 THE COURT: Well, this is a situation
9 which -- this has just come up, I take it, is that
10 right?

11 MR. COLE: Yes.

12 THE COURT: That's what we're here for.

13 MR. HUTTON: Yes.

14 THE COURT: I don't see -- in fairness to
15 everybody, including myself, I don't see how I can
16 rule on something like this just based on this record
17 alone. I'm going to need briefing on it. What is
18 going to have to happen is Mr. Podolsky's deposition
19 is going to have to be postponed.

20 He does not -- now, he has been asked and
21 he will not -- I know he's not conceding a conflict,
22 but has he been asked and refused to waive any

1 possible conflict in the event that there is one?

2 MR. HUTTON: I have not asked him. My law
3 firm has not asked him to do so. Their counsel,
4 counsel for Adams can speak to whether or not that's
5 Mr. Podolsky's position, but I don't think a waiver
6 is needed, so I think it's a moot point.

7 MR. COLE: It is my understanding, Your
8 Honor, that Mr. Podolsky has not agreed to waive
9 anything.

10 THE COURT: Maybe he has not agreed
11 because nobody has asked him or he's --

12 MR. COLE: We presented that to him this
13 morning and he did not want to waive it.

14 THE COURT: He was asked if he would and
15 he said he wouldn't?

16 MR. COLE: That's correct.

17 THE COURT: On the record or off the
18 record?

19 MR. COLE: Off the record.

20 THE COURT: Did I lose you?

21 MR. COLE: Off the record. It was off the
22 record. Can you hear me?

1 THE COURT: I can hear you.

2 MR. COLE: Yeah.

3 THE COURT: Well, again, I don't see how I
4 can really go forward on this.

5 MR. COLE: Your Honor, I don't think -- my
6 purpose in calling you this morning was not to get a
7 ruling, although obviously if you were inclined to
8 rule, that's fine, but it was simply to put you on
9 notice as to what was going on out here, because in
10 light of our motion -- I think that we had two
11 depositions scheduled for today and I think in light
12 of the nature of the motion, we'll have to postpone
13 those until we can brief and address and resolve this
14 question.

15 MR. HUTTON: Your Honor, I'd like to
16 respond to that. We have two witnesses scheduled for
17 today. One is Mr. Podolsky, one is Mr. Haag who is
18 the president of the company. I'm not aware of any
19 claim that there's a conflict with respect to
20 Mr. Haag and I'd like to proceed with that
21 deposition.

22 MR. COLE: Your Honor, if Holland & Knight

1 is disqualified from representing Reading
2 Broadcasting, Inc. in the litigation against Adams,
3 then any further participation by Holland & Knight
4 and deposing anybody is I would think impermissible.

5 THE COURT: Well, yeah, but the thing is
6 that the issue is just not well enough framed right
7 now. If there's -- you have raised circumstances
8 from which certainly I can recognize that there may
9 be a question of a conflict. There's no question
10 about that. This is not being done -- you've got a
11 serious basis for raising this.

12 On the other hand, I can't see from just
13 what you're talking about here that the conflict is
14 so apparent and so prejudicial that Mr. Hutton should
15 not be permitted to complete his business out there
16 short of Mr. Podolsky.

17 MR. COLE: But, your Honor, if there's a
18 conflict, there's a conflict. And the conflict
19 infects the representation from top to bottom. And
20 to say, well, there's kind of a conflict or maybe
21 there's a conflict, but we're going to kind of
22 overlook it for the time being and see what happens,

1 I think is inconsistent with the notion that, in
2 fact, there is a serious question about potential
3 conflict here.

4 And the conflict is not just as to
5 Mr. Podolsky. The conflict is as to Mr. Podolsky's
6 interests, which include Adams Communications
7 Corporation.

8 We are not saying -- don't get me wrong,
9 I'm not saying that Mr. Haag would never be
10 available. I'm just saying that I think until the
11 question of propriety of Holland & Knight's
12 representation of Reading Broadcasting in this
13 litigation is resolved, that we should at least put
14 on hold this discovery effort and other activities in
15 which Holland & Knight is proceeding against Adams
16 Communications Corporation.

17 THE COURT: Holland & Knight is not
18 proceeding -- you mean the discovery?

19 MR. COLE: Yes.

20 MR. HUTTON: Well, he's asking for the
21 whole case to be suspended apparently and for the
22 case to be delayed.

1 THE COURT: Well, that's pretty evident,
2 that's pretty evident.

3 MR. COLE: Your Honor, let me just point
4 out, to the extent -- I mean, if Holland & Knight is
5 correct and there is no conflict, this problem could
6 have been resolved a long time ago simply by notice
7 to Mr. Podolsky and/or at least even some kind of
8 documentation as to what their internal analysis was
9 and possibly a presentation of that to Mr. Podolsky
10 for his own information just so he would know that
11 and I'm not finding out about it until yesterday, I
12 guess, midmorning.

13 MR. HUTTON: Your Honor, I'd like to
14 respond to that, we looked at that possibility, but
15 it would be a violation of my firm's policy to alert
16 anyone in Mr. Podolsky's position that we had
17 analyzed and been concerned about potential conflict
18 and decided that no such conflict was in existence.

19 Our policy is to look at the issue
20 internally, and if we decide there is no conflict, we
21 don't voluntarily go to the client and flag the
22 issue.

1 MR. COLE: Your Honor, that's pretty
2 self-serving on the part of the law firm because it's
3 the client's interests which are paramount here, not
4 the law firm's, and if the client for whatever reason
5 decides that a possible conflict is important to the
6 client, then it's the client's right to pull the
7 plug. And simply for the law firm to say we don't
8 think there's a problem here and therefore we're not
9 going to tell anybody about the problem, I think
10 is -- well, I question that process.

11 THE COURT: Well, I think really I feel
12 that from where I am at this point in the case, this
13 puts me sort of -- I really don't have any choice.
14 Anything that I rule on this as far as the right to
15 counsel is concerned gets appealed anyway, so there's
16 no point in my trying to cut this thing -- to try and
17 cut some kind of an arrangement to accommodate
18 discovery as much as I would certainly like to.

19 Let me try -- in other words, what I'm
20 getting at, I think I'm going to have to -- I'm going
21 to have to order that this whole thing be canceled
22 until we get this resolved.

1 Before I pass off on this, let me ask --
2 and I take it that's the relief that you're asking
3 for, Mr. Cole.

4 MR. COLE: That's correct, Your Honor.
5 We're perfectly happy to have an expedited briefing
6 schedule on this starting first thing next week and
7 try to get it resolved as soon as possible. But I'm
8 concerned about proceeding with discovery in any
9 capacity in light of this question.

10 THE COURT: I'm not worried about how fast
11 you can get briefs to me. I'm just -- you're out
12 there in Chicago and we're here in Washington, and I
13 know -- let me get to the point, what about asking
14 these other principals of Adams are they going to
15 assert your right; in other words, the right to
16 assert the conflict issue ends up being with the
17 client and does Adams -- and these other principals
18 who are not being represented by Mr. Hutton's firm,
19 would they object to going forward with their
20 deposition?

21 MR. COLE: Mr. Gilbert here who is, what,
22 vice president, who is an officer of Adams and he can

1 address that, Your Honor. Do you want to say that?

2 MR. GILBERT: I would have to talk to
3 Mr. Haag, who isn't here, but my guess is more likely
4 than not he would, but I don't know for certain.

5 MR. COLE: He would what?

6 MR. GILBERT: He would object to going
7 ahead.

8 THE COURT: Who is Mr. Haag? I'm sorry, I
9 should know this, but who is Mr. Haag?

10 MR. GILBERT: Sorry, Your Honor, he's the
11 president of the company and the largest single
12 shareholder.

13 THE COURT: I'm sorry, I apologize for not
14 knowing that, but I will be knowing it from here on
15 out.

16 THE COURT: You have a lot of cases before
17 you, Your Honor, so --

18 THE COURT: It's been focused on Reading
19 principals for the last two weeks --

20 MR. HUTTON: Your Honor --

21 THE COURT: I hear what you're saying.
22 What I'm trying to explore is, is there any way of

1 handling this as a practical matter and not require
2 coming back to Washington without finishing part of
3 the job and I guess there really isn't.

4 MR. HUTTON: Your Honor, I'd like to speak
5 to that.

6 THE COURT: Go ahead, Mr. Hutton, if you
7 can help me.

8 MR. HUTTON: They are asking for a change
9 in an agreed upon schedule of depositions, and they
10 are asking to impose a substantial cost upon Reading
11 Broadcasting by virtue of this change. And I would
12 ask that any further depositions of Adams principals
13 take place in Washington.

14 THE COURT: I was going to get to that. I
15 would certainly -- if my ruling goes in favor of
16 Hutton -- I'm sorry, Mr. Hutton, if my ruling goes in
17 favor of your firm, and this case gets back in a
18 posture where actually depositions are required to be
19 taken of these witnesses by your firm, I would be
20 inclined to order that they done in Washington. But
21 that requires several steps. So let me ask Mr. Cole,
22 would you have any objection to that?

1 MR. GILBERT: Your Honor --

2 MR. COLE: This is Howard Gilbert
3 speaking.

4 MR. GILBERT: Make I speak? I'm a
5 practicing attorney. I've been an attorney for
6 probably 45, 50 years. The question of
7 confidentiality and protection of the interest of a
8 client is, as we all as lawyers know, paramount to
9 the identity of the profession. That is the issue
10 which really is at issue as to whether accountants
11 can employ lawyers and whether they can exercise the
12 specific powers as officers of the Court.

13 In our firm, in this situation I believe --
14 although I'm not going to say with absolute certainty
15 until you're there -- that we would have identified
16 the issue with the client.

17 The partnership which Mr. Podolsky owns is
18 a substantial one. Without getting into it, it
19 produces what in my world is a large amount of income
20 per year for Mr. Podolsky, and I would suspect in
21 your world too, Your Honor.

22 THE COURT: I'm sure it would in my world

1 if it does in yours.

2 MR. GILBERT: At any rate, so it's a major
3 matter. The law firm has represented Mr. Podolsky
4 through a group of lawyers which are affiliated with
5 it and became partners sometime this year, I believe,
6 at great length over many years and we're talking
7 about substantial properties in Florida.

8 I think the client was entitled to know
9 about it, so it's not -- it's an issue at which from
10 my point of view, Holland & Knight is -- I don't want
11 to necessarily use the word fault in the tort sense,
12 but in a certain ethical sense was at fault, and if
13 you were to go to a committee of the Chicago Bar
14 Association, for example, I think you would have some
15 issues.

16 I asked Mr. Hutton if they had a written
17 memo on this issue and he said no. And I don't know,
18 Your Honor, what facts were presented to the law firm
19 of Holland & Knight to make this determination.

20 As somebody who has represented
21 Mr. Podolsky from time to time over the years, let me
22 state that this is not a simple partnership.

1 Mr. Podolsky doesn't have a lot of simple
2 partnerships. So these are not simple issues.

3 I think putting our side under the burden
4 for an omission or a seeking of a business, putting
5 it crudely, Your Honor, is not something that it's
6 fair to impose the burden on Adams.

7 They easily could have asked Mr. Podolsky
8 to waive it, and I don't know what he would have
9 done. They didn't. They have known about it for I
10 don't know what period. They should have told us
11 about it. They should have told Mr. Podolsky.

12 Now to say we have three more people to be
13 deposed, and we're going to have to bear the costs,
14 which is thousands of dollars of transportation to
15 Washington, because of something where they engage in
16 what I consider a fraud course of action in order to
17 enhance the economic aspects of their practice just
18 isn't fair, Your Honor.

19 MR. HUTTON: I'd like to respond to that,
20 sir.

21 THE COURT: Go ahead, Mr. Hutton.

22 MR. HUTTON: However interesting the views

1 of the Chicago Bar may be, that's not what's at issue
2 in this case.

3 My law firm doesn't have any lawyers
4 practicing in Chicago, and the lawyers involved in
5 the representation of Mr. Podolsky's companies are in
6 Florida, and I, of course, am in Washington D. C.

7 We looked at it, and Mr. Gilbert's analysis
8 suggests that there should have been a conclusion
9 that there was a conflict. We looked at it and
10 determined that there was not a conflict, and so no
11 waiver was needed. And if you affirm that analysis,
12 then it seems to me it's perfectly fair to ask them
13 to come to Washington.

14 THE COURT: Well, I want to get this --
15 these arguments are very well presented, but I think
16 you can appreciate -- my problem is I'm really going
17 to have to focus on this. These are very difficult
18 questions to adjudicate, questions on ethics and
19 conflicts, and I have to understand all the facts at
20 the same time. That is to say, I can't do this in
21 bits and pieces, and I know you gentlemen appreciate
22 that. But what I am on the assumption -- and I'm

1 always on the assumption is that until I'm shown
2 otherwise, I'm assuming the lawyers are acting
3 ethically in these cases, but I don't have any choice
4 but to put this case on hold until I get this
5 resolved in light of the position that the Adams
6 counsel are taking on this.

7 MR. HUTTON: Well, I'd like to raise one
8 scheduling issue, and that is that we're scheduled to
9 take depositions of numerous public witnesses
10 starting next Wednesday, and those people have been
11 subpoenaed. In many cases they have rearranged their
12 lives in order to be able to testify. They have no
13 involvement in this dispute one way or the other.
14 They are not associated with either company. I would
15 ask that we -- that both sides be allowed to go
16 forward with those depositions.

17 THE COURT: Mr. Cole.

18 MR. COLE: Your Honor, I have reservations
19 about that, but let me also say that Mr. Bechtel has
20 been the one who has been kind of ram rodding the
21 Reading side of the discovery process, and I'm
22 reluctant to offer an opinion on that without

1 conferring with him to see what his view on it is.
2 He's the one who has been subpoenaing the Reading
3 witnesses and preparing for those depositions.

4 And obviously while my own view sitting
5 here in Chicago is that I think a disqualification
6 would be across the board and, therefore, take
7 Holland & Knight out of all activities -- and that's
8 my own personal view right now -- my concern is that
9 if Mr. Bechtel feels otherwise, I'm perfectly happy
10 to have him override my position and take a contrary
11 view, and I will consult with him as soon as
12 possible.

13 THE COURT: I would really feel that -- I
14 feel very strongly that -- and it's primarily for the
15 purposes of the public witnesses -- that that
16 discovery go forward.

17 MR. COLE: I understand.

18 THE COURT: I have to presume that Holland
19 & Knight is acting in good faith on this until I have
20 a chance to really get the situation presented in the
21 proper briefing and I can really focus on it.

22 MR. COLE: I heard --

1 MR. GILBERT: If I may, Your Honor, first
2 off, Mr. Bechtel feels very strongly on this issue of
3 conflict and he's an individual, he's a former
4 president of the bar, of the FCC Bar Association who
5 I have esteem for over 20 years and I don't know how
6 you feel about him.

7 THE COURT: I have enormous respect for
8 Mr. Bechtel, as everybody, all the lawyers in this
9 case.

10 MR. GILBERT: Right, good, and I do too as
11 a matter of fact, all of the lawyers in this case.
12 But if there's a conflict, it infects the entire
13 representation and doesn't run as to whether a
14 witness can be deposed. It infects whether or not
15 the law firm can represent the other side, and so
16 that the issue, I think, really requires resolution
17 at this point.

18 Once again, it isn't our side that's
19 responsible for the late surfacing of this issue.
20 It's the other side.

21 I don't know what facts Holland & Knight
22 has. I just don't know. And until you see, as we

1 all know as lawyers, a memorandum setting forth
2 concrete facts, you don't know what anybody's
3 position on any issue in life really is.

4 So whether or not there's a conflict is a
5 question of understanding what the facts were. I
6 would -- and there is no written memo as Mr. Hutton
7 has told us, so you don't even know -- when I say
8 you, I mean you in a generic sense don't know what
9 facts anybody was presented with.

10 I will tell you, Your Honor, that you have
11 to be a relatively sophisticated corporate structure,
12 a business structure individual to understand the
13 nature of the entities that are involved here and
14 then understand what the interests are.

15 It's not like owning 100 shares in AT&T or
16 something. It's owning shares in business
17 partnerships which are complex entities. So I think
18 it's a very significant issue and I think at this
19 point particularly -- I think in general just given
20 my views of ethics in general -- and I'm not an
21 expert on conflicts -- we have an ethics committee in
22 this firm too, it's a complicated issue -- that